

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3364 of 1984

Date of decision: 24-7-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STANISH KESHAVBHAI CHAUHAN

Versus

DISTRICT EDUCATION OFFICER  
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Appearance:

MR MC BHATT for Petitioner

Mr. N.N. Pandya for the respondents.  
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CORAM : MR.JUSTICE S.K.KESHOTE

ORAL JUDGEMENT

This writ petition is filed by the Methodist Church in India which is a registered public charitable trust. The grievance of the petitioner is that the registration of the primary school at Kathlal in Kheda District run by the Trust has been cancelled by respondents on account of three defaults said to have been committed by the Trust. The first default said to have been committed is that the Trust has not given benefit of recommendations of Desai Pay Commission to its employees. Another default is that one retired person has been given employment. The third default is that the services of one of the teachers who was employed for nine years has been terminated.

2. Mr. M. C. Bhatt, learned counsel for the petitioner contended that the benefit of Desai Pay Commission had already been given to all the employees of the Trust and this position has not been disputed by the counsel for the respondents. Merely because at one point of time the benefits of recommendations of Desai Pay Commission were not extended to its employees by the Trust, it does not seem to be reasonable to cancel the registration of the school. Instead of cancelling the registration of the institution insistence should have been made to extend the benefits of the Pay Commission to the employees.

3. Learned counsel for the petitioner further contended that the retired person has been given employment in the institution has already been removed from service and as such the second default does not survive. This position has also not been controverted by the counsel for the respondents. So far as the last default is concerned, learned counsel for the petitioner made twofold submissions. It has been firstly contended that the employer has a right to terminate the services of its employees in accordance with law. In case the services of one of the teachers is terminated in accordance with law it cannot be said to be a default which warrants the penalty of cancellation of registration of the institution. In such cases the proper course for the respondents would have been to consider the legality and propriety of termination and to

pass appropriate orders. If the respondents had passed such an order and the same has not been complied with by the petitioner, there would have been justification for initiating action for cancellation of registration and not otherwise. It has next been contended that in a matter of termination of the services of an employee, sufficient remedy is provided to the employee to approach the Department, Tribunal or this Court against the order of termination of services, which has not been done in the present case according to the information of the petitioner.

4. I find sufficient merit in the contentions raised by the learned counsel for the petitioner. An employer has all the rights to terminate the services of his employees in accordance with law. Merely because the Trust has terminated the services of a teacher, it does not incur disqualification to the extent of canceling the registration of the institution. The concerned authority may resort to initiate cancellation of registration of the institution only after adjudicating upon the legality and propriety of an order of termination of an employee passed by the employer. In case the termination is held to be illegal, then an opportunity should be given to the Trust to comply with the direction that may be given to take back that employee in service, and noncompliance of such direction may justify the action of the respondents in contemplating proceedings of cancellation of registration. There is yet another ground which is in favour of the petitioner. The order of cancellation of registration of the institution has been stayed by this court on 5-7-1984 and for all these years that order was not given effect to. It is not the case of the respondents that the petitioner has made any further defaults during all these periods. When the petitioner has been protected against the order of cancellation of registration by this court for all these years, I do not consider it proper that the impugned order be given effect to now, more so when two other defaults which were pointed out also do not exist.

5. In the result this special civil application succeeds and the same is allowed. The order annexure-C dated 28-6-1984 passed by the respondents is quashed and set aside. Rule is made absolute accordingly. No order as to costs.

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